

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
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2007 FEB -6 P 12:19
U.S. DISTRICT COURT
DISTRICT OF MASS.

RIZZARI CONSTRUCTION,)
Plaintiff)
v.)
GRANITE INDUSTRIAL GASES)
INC., and TODD MILLER,)
individually)
Defendants)

Civil Action #: 1:05-cv-10434-GAO
Magistrate Judge Alexander

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

Now comes the plaintiff, Rizzari Construction, pursuant to Fed.R.Civ.P. Rule 37, for an Order compelling the defendant, Granite Industrial Gases Inc, and Todd Miller, individually to produce all answers and documents responsive to produce plaintiff's first request for production of documents and plaintiff's first and second sets of interrogatories propounded to the defendant. As grounds for this motion, Rizzari Construction states the following:

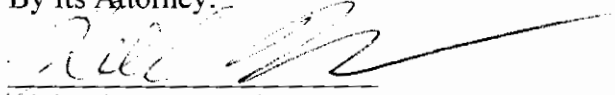
1. On March 13, 2006, by and through their counsel, plaintiff Rizzari Construction served upon defendants Granite Industrial Gases Inc., and Todd Miller, individually Plaintiff's First Request for Production of Documents and Things.
2. On March 13, 2006 and December 13, 2006, by and through their counsel, plaintiff Rizzari Construction served upon the defendants Granite Industrial Gases Inc., and Todd Miller, individually Plaintiff's First and Second Sets of Interrogatories.
3. Pursuant to Fed.R.Civ.P. Rule 34, the plaintiff had thirty (30) days to file its answers and objections to the documents and requests.
4. To date, the defendant has not produced any documents or any answers in response to Rizzari Construction's requests.
5. Plaintiff has discussed defendant's failure to answer with defense counsel on several occasions but no responses have been forthcoming.

WHEREFORE, Rizzari Construction respectfully requests that this Honorable Court enter an Order:

- A. compelling the defendant to respond to the plaintiff's first request for production of documents and things;
- B. compelling the defendant to respond to the plaintiff's first and second sets of interrogatories propounded to the defendant;
- C. awarding Rizzari Construction all reasonable expenses, including attorney's fees, incurred in bringing this motion; and
- D. granting such other and further relief as Rizzari Construction may be able to demonstrate it is entitled to.

Dated: February 5, 2007

Respectfully Submitted,
Rizzari Construction,
By Its Attorney:


Richard P. Heartquist
200 Sutton Street, Suite 244
North Andover, MA 01845
(978) 687-6664
BBO# 564451

COMMONWEALTH OF MASSACHUSETTS

US DISTRICT COURT

DEPARTMENT

MASSACHUSETTS DIVISION

DOCKET #: 1:05-cv-10434-

GAO

RIZZARI CONSTRUCTION,)
Plaintiff)

v.)

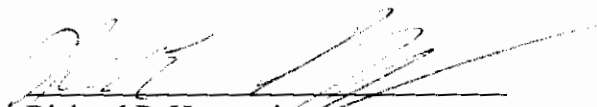
GRANITE INDUSTRIAL GASES)
INC., and TODD MILLER,)
individually)
Defendants)

**AFFIDAVIT IN SUPPORT OF
MOTION TO COMPEL
DISCOVERY**

Now comes Richard P. Heartquist who, under oath, deposes and states the following to be true and accurate to the best of my knowledge and belief:

1. On March 13, 2006 I, served upon the defendants Granite Industrial Gases Inc., and Todd Miller, individually Plaintiff's Request for Production of Documents and Things.
2. On March 13, 2006 and December 13, 2006 I, served upon the defendants Granite Industrial Gases Inc., and Todd Miller, individually plaintiff's First and Second Sets of Interrogatories.
3. To date, the defendant has not produced any documents or any answers in response to the requests that I have made.
4. I have discussed defendant's failure to answer with defense counsel on several occasions but no responses have been forthcoming.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 5th DAY OF
FEBUARY 2007.

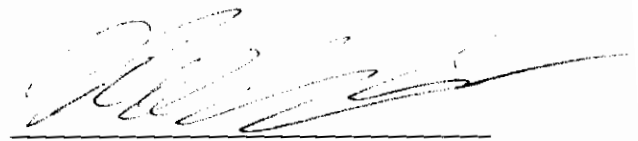

Richard P. Heartquist

CERTIFICATE OF SERVICE

I, Richard P. Heartquist, attorney for the Plaintiff, hereby certify that I have this date caused a true copy of the above documents (Motion to Compel Discovery from Defendant) to be served upon the parties listed below by fax and mail:

Timothy Bray
300 Brickstone Square
PO Box 39
Andover, MA 01810

Dated: February 5, 2007


Richard P. Heartquist